IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

Crl.MC.No. 3495 of 2007()

ST.1406/2005 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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PETITIONER: ACCUSED

VINOD KUMAR.A., AGED 38 YEARS,
S/O.ARAVINDAKSHAN NAIR, BUSINESS, ARAVINDALAYAM,
EDAPPALLY NORTH P.O., PIN-682 024, EDAPPALLY
NORTH VILLAGE, KANAYANNOOR TALUK, ERNAKULAM
DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HONOURABLE HIGH COURT OF
KERALA AT ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3495 of 2007

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Dated this the 23rd day of November, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. Cognizance has been taken by the learned Magistrate as early as in 2005, as can be seen from the number assigned to the case, S.T. 1406 of 2005. Consequent to his non-appearance, the learned Magistrate has issued a warrant of arrest against the petitioner. The petitioner finds such warrant issued by the learned Magistrate chasing him.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful, but was due to reasons beyond his control. He had not received any summons or notice from the court. He was unaware of the pendency of the proceedings. The petitioner is willing to appear before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned

Magistrate on merits, in accordance with law and expeditiously. He therefore prays that directions under Section 438 and/or 482 Cr.P.C. may be issued in favour of the petitioner.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must

proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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